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California Regional Water Quality Control Board

Los Angeles Region

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Mr. Ted Bentley
1536 Eastman Avenue, Suite A
Ventura, CA 93004

WATER QUALITY CERTIFICATION FOR PROPOSED SAN ANTONIO CREEK CROSSING MAINTENANCE PROJECT (Corps' Project No. 2002-00720-JWM), SAN ANTONIO CREEK, CITY OF OJAI, VENTURA COUNTY (File No. 04-023)

Dear Mr. Bentley:

Regional Board staff has reviewed your request on behalf of the Bentley Family Limited Partnership (BFLP) for a Clean Water Act Section 401 Water Quality Certification for the above-referenced project. Your application was deemed complete on July 15, 2004.

I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that have received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification.

The Applicant shall be liable civilly for any violations of this Certification in accordance with the California Water Code. This Certification does not eliminate the Applicant's responsibility to comply with any other applicable laws, requirements and/or permits.

Should you have questions concerning this Certification action, please contact Ms. Valerie Carrillo, Lead, Section 401 Program, at (213) 576-6759.

[Original Signed by]
Jonathan Bishop
Executive Officer

September 21, 2004
Date

California Environmental Protection Agency



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Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

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ATTACHMENT A

Project Information File No. 04-023

1. Applicant: Ted Bentley
1536 Eastman Avenue, Suite A
Ventura, CA 93004

Phone: (805) 650-2794 Fax: (805) 650-2797
2. Applicant's Agent: Carolyn Casavan
Group Manager
1838 Eastman Avenue, Suite 200
Ventura, CA 93004

Phone: (805) 644-7976 Fax: (805) 644-5929
3. Project Name: San Antonio Creek Crossing Maintenance
4. Project Location: City of Ojai, Ventura County

Longitude: 119° 14' 44.76"; Latitude: 34° 26' 6.78"
5. Type of Project: Creek Crossing Maintenance
6. Project Description: *Purpose:*

The concrete fair-weather crossing located on San Antonio Creek, Ventura County, is the only crossing accessible to the Bentley Ranch. Large storm events in the San Antonio Creek watershed result in the deposition of sediments and large cobbles within the concrete fair-weather creek crossing, making it impassable for ranch vehicles and emergency fire vehicles. The purpose of this project is to maintain accessibility to the applicant's property while taking measures to protect aquatic resources and riparian habitat.

Description:

The Bentley Family Limited Partnership (Bentley) owns and uses a concrete fair-weather crossing located on San Antonio Creek, Ventura County. The crossing is the only access road to the ranch.

The concrete crossing is approximately 100 feet long and was permitted by the County of Ventura and the California Department of Fish and Game (CDFG) in the mid-1980's. The permits for construction did not address maintenance of the crossing, which has

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become a recent issue. Up to two feet of sediment consisting of fine silts, sand, and larger cobble may accumulate over the concrete crossing after a storm. Generally, when fine silts and sand greater than five inches deep accumulates over the crossing, vehicles cannot make it through the crossing as tires become bogged down in the silt and sand. In this event, the project would entail the use of a bucket excavator, operating from the entrance side of the creek crossing, to carefully remove large cobbles and sediment deposited on top of the concrete crossing. The excavation would occur after high creek flows have subsided, generally from 5 to 7 days after peak storm flow. Permanent flagging would be erected to delineate the limits of the excavation work. The excavator will also remove accumulated sediment immediately downstream of the crossing to remove a hydrologic “plug” which causes water to back up and pool over the streambed gradient, allowing water to more easily flow downstream. Excavation downstream would not exceed 50 feet from the centerline of the crossing.

Up to 150 cubic yards of accumulated sediment would need to be dredged one (1) to four (4) times per year to restore the fair-weather crossing after large storm events.

The project will consist of the emergency clearing of a 100-foot concrete crossing, which has become impassable due to the accumulation of sediment, as described above. Clearing of the crossing will be done with a front-end-loader, and will be limited to the length crossing and 25 feet upstream and downstream of the crossing centerline. Heavy equipment will not intrude beyond the crossing. The activity will occur several days after rain has ceased to protect potentially migrating steelhead trout. A biologist will be onsite throughout the duration of the activity. The biologist will stop clearing activities over the crossing if they determine that the activity may harm steelhead trout or the red-legged frog. The biologist will attempt to relocate steelhead trout and/or California red-legged frog from upstream out of harms way before giving the authorization for the clearing activities to begin. The biologist will maintain detailed records of any individuals moved to assist in future identification should the animals return to the project site and the information shall be submitted to the Regional Board.

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| 7. Federal Agency/Permit: | U.S. Army Corps of Engineers
NWP No. 3 (Permit No. 2002-00720-JWM) |
| 8. Other Required Regulatory Approvals: | California Department of Fish and Game
Streambed Alteration Agreement |
| 9. California Environmental Quality Act (CEQA) Compliance: | The proposed project is Categorical Exempt from CEQA pursuant to the CEQA Guidelines, Section 15301 (Existing Facilities). |
| 10. Receiving Water: | San Antonio Creek (Hydrologic Unit No. 402.32) |
| 11. Designated Beneficial Uses: | MUN*, IND, PROC, AGR, GWR, FRSH, REC-1, REC-2, WARM, COLD, WILD, MIGR, SPWN, WET

*Conditional beneficial use |
| 12. Impacted Waters of the United States: | Non-wetland waters (vegetated streambed): 0.11 temporary acres |
| 13. Dredge Volume: | Up to 150 cubic yards of creek sediment will be dredged using the front-end-loader. The sediment will be placed in a suitable upland location where it will not be subject to re-depositing back into San Antonio Creek. Some re-suspension of sediments into the creek may occur during the clearing activities. |
| 14. Related Projects Implemented/to be Implemented by the Applicant: | The Applicant has not identified any related projects carried out in the last 5 years or planned for implementation in the next 5 years. |
| 15. Avoidance/Minimization Activities: | The Applicant has proposed to implement several Best Management Practices, including, but not limited to, the following: <ul style="list-style-type: none">• A qualified biologist will identify suitable relocation pools upstream or downstream of the road crossing prior to the commencement of work; |

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- A qualified biologist will survey the road crossing and 0.25 miles downstream of the crossing for California red-legged frog and steelhead trout prior to the commencement of work;
- If any California red-legged frog or steelhead trout are found within the excavation area, or in the downstream surveyed area, hay bales or silt fencing will be placed downstream of an upstream relocation pool, if necessary, in order to prevent relocated individuals from re-entering the project area. If animals are relocated to a downstream pool, water quality protection measures (hay bales or silt fencing) will be placed at a suitable location within the project area to prevent individuals from entering the project area. The qualified biologist will then capture individuals and move them out of harm's way to a relocation pool. Appropriate techniques and equipment will be used to capture individuals and safely transport them to the relocation pool;
- Once individuals have been successfully relocated, the qualified biologist may then authorize the maintenance project to proceed once he or she has determined that California red-legged frog or steelhead trout will not be affected in any way during the excavation;
- If surveys find no California red-legged frogs or steelhead trout, relocation will not be necessary and hay bales or fence will not be erected downstream of upstream relocation site, and the excavation will proceed;
- At all times, a qualified biologist will remain on-site during excavation to ensure no listed species are in the excavation zone. If individual(s) are found within the excavation zone, the biologist will stop activities and relocate the individual(s) to a relocation pool, using proper protocols;
- Once the excavation is complete, the hay bales or silt fence downstream of the relocation pool will be removed within 24 hours of completion of the maintenance work, allowing individuals to freely move within the watershed;

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- The biologist will conduct a training session for worksite personnel on the life history, identification and habitat requirements for California red-legged frog and steelhead trout prior to any construction activities commencing;
- No refueling of vehicles will occur within 60 feet of riparian habitat or waters of San Antonio Creek;
- Removal of vegetation will only occur in the depositional area outlined in the project plans;
- Removal of native vegetation greater than 3 inches in diameter breast height will be avoided to the maximum extent practicable; and
- Invasive species (*Arundo donax*) will be removed annually within the project area outside of the maintenance zone. Removal will occur for a distance of 50 linear feet, on both north and south Creek banks, upstream of the crossing, limit to the Bentley property boundary.

16. Proposed
Compensatory
Mitigation:

The Applicant shall provide compensatory mitigation for temporary impacts (0.11 acres) associated with this project by performing habitat restoration in the vicinity of the crossing at a minimum ratio of 1:1.

A qualified biologist with experience in riparian habitat restoration will supervise all mitigation-related activities, including maintenance and annual report preparation. The following mitigation measures will be implemented before and after excavation activities to compensate for any destruction of riparian habitat and impacts to water quality that might occur during project implementation:

- Removal of vegetation will only occur in the depositional area provided within the project plans. Any removal or pruning needed outside this zone will require notification to the Regional Board, USACOE and CDFG.
- Prior to the commencement of excavation activities, a qualified biologist will inventory the number and type of native species that will be necessary to remove during excavation. Assuming

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multiple excavations are needed throughout a winter season, a tally of removed trees will be kept for mitigation purposes.

- Removal of native vegetation greater than 3 inches in diameter breast height (DBH) will be avoided to the maximum extent practicable. Removal would only occur if necessary to restore hydraulic flow in the depositional area.
- If any native oaks (*Quercus* spp.), California black walnut (*Juglans californica*), or western sycamores (*Plantanus racemosa*) are damaged or destroyed during project activities, they will be replaced in the project vicinity at a ratio of 5:1. If native willows (*Salix* spp.) are damaged or destroyed, they will be replaced at a ratio of 2:1. Ratios will be per tree. These ratios are designed to “overplant” an area, in an effort to increase the likelihood of plant survival and the achievement of project success. In an effort to limit the establishment of invasive species, and more closely replicate natural conditions, replacement trees will be planted in “clusters”.
- Replacement willows will be collected during the dormant season (winter) as pole cuttings from plants in the project vicinity, or from specimens salvaged from the excavation area. The cuttings will be planted on 6 to 8 foot centers and will be dug into the wetted soil in the riparian zone.
- Replacement trees of other native species will be collected from project site cuttings, seeds, salvaged materials, and, if necessary, from a local native plant nursery. Specimens will be planted between the period October 31 and March 30 to take advantage of the rainy season. Larger trees such as western sycamore will be planted on 20-foot centers. Mulch will be placed around replacement trees to minimize water loss and to discourage weed growth.
- Survival of replacement trees shall achieve 80 percent after the first growing season and 100 percent thereafter. Willow growth should achieve 15 feet after 5 years, and growth of larger riparian tree species such as western sycamore should achieve 9 feet after 5 years.

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- Supplemental water to the replacement trees will be provided should natural moisture conditions be inadequate to ensure plant survival. The irrigation will gradually be removed after the second growing season unless doing so would threaten plant survival.
- Invasive species such as *Arundo donax* will be removed annually within the project area outside of the maintenance zone. Removal will occur for a distance of 50 linear feet, on both north and south Creek banks, upstream of the crossing. This is the limit of the Bentley property boundary. Removal methods will include cutting and treatment with the herbicide glyphosate. Cutting will occur during the species dormant season, November through February. Replacement trees will be planted in areas where invasive have been cut and treated. Immediately after cutting, glyphosate will be applied to cut stems to be most effective. If necessary, treatment will occur two additional times during the growing season (March 1 through October 1). The herbicide will be hand painted on the cut stems, and applicators will be careful to prevent the herbicide from entering surface waters. It should be noted glyphosate is approved by the U.S. Environmental Protection Agency for use near aquatic sites.
- Areas treated for invasive removal will be monitored for a period of five (5) years. New growth will be cut and treated with herbicide, and native species regeneration and replacement planting will be encouraged and monitored. Successful eradication of invasive in the treatment area will be 15% relative cover of invasive at the end of the third year, and 5% relative cover at the end of fifth year.

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Conditions of Certification File No. 04-023

STANDARD CONDITIONS

Pursuant to §3860 of Title 23 of the California Code of Regulations (23 CCR), the following three standard conditions shall apply to this project:

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and Article 6 (commencing with 23 CCR §3867).
2. This Certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to 23 CCR Subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR Chapter 28 and owed by the Applicant.

ADDITIONAL CONDITIONS

Pursuant to 23 CCR §3859(a), the Applicant shall comply with the following additional conditions:

1. The Applicant shall submit to this Regional Board copies of any other final permits and agreements required for this project, including, but not limited to, the U.S. Army Corps of Engineers' Section 404 Permit and the California Department of Fish and Game's Streambed Alteration Agreement. **These documents shall be submitted prior to any discharge to waters of the State.**
2. The Applicant and all contractors employed by the Applicant shall have copies of this Certification, the approved maintenance plan, and all other regulatory approvals for this project on site at all times so they are familiar with all conditions set forth.
3. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the State. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of waters of the State.

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4. No construction material, spoils, debris, or any other substances associated with this project that may adversely impact water quality standards, shall be located in a manner which may result in a discharge or a threatened discharge to waters of the State.
5. The Applicant shall implement all necessary control measures to prevent the degradation of water quality from the proposed project in order to maintain compliance with the Basin Plan. The discharge shall meet all effluent limitations and toxic and effluent standards established to comply with the applicable water quality standards and other appropriate requirements, including the provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act. This Certification does not authorize the discharge by the applicant for any other activity than specifically described in the 404 Permit.
6. The discharge shall not: a) degrade surface water communities and populations including vertebrate, invertebrate, and plant species; b) promote the breeding of mosquitoes, gnats, black flies, midges, or other pests; c) alter the color, create visual contrast with the natural appearance, nor cause aesthetically undesirable discoloration of the receiving waters; d) cause formation of sludge deposits; or e) adversely affect any designated beneficial uses.
7. The Applicant shall allow the Regional Board and its authorized representative entry to the premises, including all mitigation sites, to inspect and undertake any activity to determine compliance with this Certification, or as otherwise authorized by the California Water Code.
8. Application of pesticides must be supervised by a certified applicator and be in conformance with manufacturer's specifications for use. Compounds used must be appropriate to the target species and habitat. All pesticides directed toward aquatic species must be approved by the Regional Board. Pesticide utilization shall be in accordance with State Water Resources Control Board Water Quality Order Nos. 2004-0008-DWQ and 2004-0009-DWQ.
9. The Applicant shall not conduct any construction activities within waters of the state during a rainfall event. The Applicant shall maintain a **five-day clear weather forecast** before conducting any operations within waters of the State.
10. The Applicant shall utilize the services of a qualified biologist with expertise in riparian assessments during all construction activities where clearing involves areas to be partially cleared (i.e. some vegetation is to remain in the same reach or in an adjacent reach). The biologist shall be available on site during construction activities to ensure that all protected areas are marked properly and ensure that no vegetation outside the specified areas is removed. The biologist shall have the authority to stop the work, as necessary, if instructions are not followed. The biologist shall be available upon request from this Regional Board for consultation within 24 hours of request of consultation.

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11. No activities shall involve wet excavations (i.e., no excavations shall occur below the seasonal high water table). A minimum **5-foot** buffer zone shall be maintained above the existing groundwater level. If construction or groundwater dewatering is proposed or anticipated, the Applicant shall file a **Report of Waste Discharge** to this Regional Board and obtain any necessary NPDES permits/Waste Discharge Requirements prior to discharging waste. Sufficient time should be allowed to obtain any such permits (generally 180 days). If groundwater is encountered without the benefit of appropriate permits, the Applicant shall cease all activities in the areas where groundwater is present, file a Report of Waste Discharge to this Regional Board, and obtain any necessary permits prior to discharging waste.
12. All project activities not included in this Certification, and which may require a permit, must be reported to the Regional Board for appropriate permitting. Bank stabilization and grading, as well as any other ground disturbances, are subject to restoration and revegetation requirements, and may require additional Certification action.
13. All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. If surface water diversions are anticipated, the Applicant shall develop and submit a **Surface Water Diversion Plan** to this Regional Board. The plan shall include the proposed method and duration of diversion activities, erosion and sediment controls, and a map or drawing indicating the locations of diversion and discharge points. The plan shall be submitted prior to any surface water diversions. If surface flows are present, then upstream and downstream monitoring for pH, temperature, dissolved oxygen, turbidity, and total suspended solids shall be implemented. These constituents shall be monitored on a **daily** basis during the first week of diversion activities, and then on a **weekly** basis, thereafter, until the in-stream work is complete. Results of the analyses shall be submitted to this Regional Board by the **15th** day of each subsequent sampling month. A map or drawing indicating the locations of sampling points shall be included with each submittal. Diversion activities shall not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any such violations may result in corrective and/or enforcement actions, including increased monitoring and sample collection.
14. The Applicant shall restore all TEMPORARY IMPACTS to waters of the United States and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the state. Restoration shall include grading of disturbed areas to pre-project contours and revegetation with native species to the extent feasible. The Applicant shall implement all necessary Best Management Practices to control erosion and runoff from areas associated with this project.

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15. The Applicant shall provide COMPENSATORY MITIGATION to offset the proposed temporary loss of **0.11 acres** waters of the United States by creating or restoring riparian habitat at a minimum **1:1** area replacement ratio (**0.11 acres**).
16. The Applicant shall submit to this Regional Board **Annual Mitigation Monitoring Reports** by **January 1st** of each year documenting all restoration and mitigation efforts, including, percent survival by plant species and percent cover. The reports shall include discussion of any monitoring activities and exotic plant control efforts. Representative pre and post photographs from designated stations shall be included in the reports. The reports shall be submitted by **January 1st** each year for a minimum period of **five (5) years** after planting or until mitigation, success has been achieved.
 - (a) Color aerial and representative cross-section photo documentation of the pre- and post-project conditions;
 - (b) Geographical Positioning System (GPS) coordinates in decimal-degree format outlining the boundary of the project and mitigation areas;
 - (c) The overall status of project including a detailed schedule of work for each reach;
 - (d) Copies of all permits revised as required in Additional Condition 1;
 - (e) All proposed revisions to the Maintenance Plan for the next season; and
 - (f) A certified statement from the permittee or his/her representative that all conditions of this Certification have been met.
17. All applications, reports, or information submitted to the Regional Board shall be signed:
 - (a) For corporations, by a principal executive officer at least of the level of vice president or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which discharge originates.
 - (b) For a partnership, by a general partner.
 - (c) For a sole proprietorship, by the proprietor.
 - (d) For a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

Conditions of Certification
File No. 04-023

- "I declare under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

____ (Signature)
____ (Title)''

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of the time the Applicant becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, corrective actions and if the noncompliance has not been corrected; the anticipated time it is expected to continue and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.

24. *Enforcement:*

- (a) In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.
 - (b) In response to a suspected violation of any condition of this Certification, the State Water Resources Control Board (SWRCB) or Regional Water Quality Control Board (RWQCB) may require the holder of any permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring reports the SWRCB deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 - (c) In response to any violation of the conditions of this Certification, the SWRCB or RWQCB may add to or modify the conditions of this Certification as appropriate to ensure compliance.
25. This Certification shall expire **five (5) years** from date of this Certification. The Applicant shall submit a complete application prior to termination of this Certification if renewal is requested.